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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/749,956

12/31/2003

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201 7590 05/03/2007  
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EXAMINER

STULII, VERA

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

05/03/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/749,956

Applicant(s)

SLESINSKI ET AL.

Examiner

Vera Stulii

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claim 22 refers to preceded cancelled claim 21. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-20 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Billerbeck et al (US 4,000,322) in view of Sevenants et al (US H0001636).

Billerbeck et al discloses sweetened storage stable peanut butter spread and method of manufacture. In regard to claims 1-20 and 22-25, Billerbeck et al disclose that "[t]he composition is prepared by combining at an elevated temperature a mixture of milled peanuts, additional edible oils, an emulsifier, fortifying materials, and a stabilizer with the sweetening agent having a small amount of edible hydrophilic substance" (Abstract). In regard to claims 1, 4, and 6-8, Billerbeck et al disclose that amount of milled peanuts in the final composition is from about 60 to 92 wt. % (Col. 2 lines 4-6, Col. 3 lines 61-63).

In regard to claims 1 and 5, Billerbeck et al disclose "The edible oil which is added may be a vegetable oil or a partially hydrogenated vegetable oil. These oils include peanut oil, corn oil, cotton seed oil, rice oil, coconut oil, soy bean oil, or other equivalent edible oil" (Col. 2 lines 4-6).

In regard to claims 9 and 10, Billerbeck et al disclose that "[t]he added oil will generally vary from 6 to 24 weight percent" (Col. 3 lines 65-66).

In regard to claim 14-15, 19-20, and 22-24, Billerbeck et al disclose that "[o]ther sweetening agents which may be employed are naturally occurring, naturally derived or synthetic groups. These syrups may be used in place of honey and employed in the subject process in substantially the same manner as the honey" (Col. 2 lines 59-63). In regard to claim 14, it is also noted that high intensity sweetener is a synthetic sweetener.

In regard to claim 16-18, Billerbeck et al disclose that peanuts have about 50 wt. % solids and 50 wt. % oil (Col. 2 lines 8-11). Since Billerbeck et al disclose using from 60 to 92 wt. % of peanuts that constitutes from 30 to 46 wt. % of oil (Col. 2 lines 4-6, Col. 3 lines 61-63), and also adding from 6 to 24 weight percent of oil (Col. 3 lines 65-66), then total amount of fat (peanut oil) in the composition is from 36 to 70%.

In regard to claims 15, 23 and 24 reciting amounts of sweeteners, Billerbeck et al disclose that the sweetening agent is used to provide a final concentration of at least 5 wt. % (Col. 4 lines 4-5). Billerbeck et al also disclose honey as a sweetening agent, and that synthetic sweeteners may be used in place of honey.

Billerbeck et al is taken as cited above.

Billerbeck et al do not disclose total adjusted carbohydrate content, added non-peanut soy protein, protein content of the final composition, and amount of artificial sweetener used.

Sevenants et al disclose a reduced fat peanut butter or spread having comprising from about 40 to about 70 wt. % peanut solids, from about 30 to about 60 wt. % peanut oils, from about 15 to about 50 wt. % non-peanut solids, etc. (Abstract). Sevenants et al disclose that "[i]n order to lower the fat content and maintain protein levels in the spread, non-fat containing solids are used" (Col.3 lines 11-12). Sevenants et al disclose protein supplements such as additional peanut solids, soy flour, soy concentrate, soy isolate as a non-fat containing solids are used (Col. 3 lines 18-20). Sevenants et al also disclose that soy protein can be added to fortify this low-fat product with protein materials (Col. 4 lines 59-61). Sevenants et al disclose that "[t]he amount of artificial sweetener used would be that effective to produce the sweetness that is desired; and would be about the equivalent of the addition of from about 1% to 7% of sucrose. Usually from about 0.001% to about 2% artificial sweetener is used". Sevenants et al disclose use of high intensity sweeteners such as aspartame and acesulfam (Col. 4 lines 33-35).

Since Sevenants et al disclose a reduced fat peanut butter or spread comprising from about 40 to about 70 wt. % peanut solids, from about 30 to about 60 wt. % peanut oils, from about 15 to about 50 wt. % non-peanut solids, and Billerbeck discloses a peanut butter composition comprising from 60 to 92 wt. % of peanuts and from 36 to 70 wt. % peanut/vegetable oils, one of the ordinary skill in the art would have been motivated to modify disclosure of Billerbeck et al and add non-peanut solids such as soy protein as taught by Sevenants et al. One of the ordinary skill on the art would have been motivated to do so in order to reduce fat content and to fortify the composition as

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taught by Sevenants et al. It would also have been obvious to vary amounts of added proteins in order to achieve desired level of fats in the final composition as taught by Sevenants et al. Since Billerbeck et al disclose that the sweetening agent such as honey is used to provide a final concentration of at least 5 wt. % and the fact that synthetic sweeteners may be used in place of honey, and Sevenants et al disclose that usually from about 0.001 to about 2% artificial sweetener is used as the equivalent of the addition of from about 1 to 7% of sucrose, one of the ordinary skill in the art would have been motivated to use from about 0.001 to about 2% of high intensity sweetener instead of honey as taught by Billerbeck et al and Sevenants et al. One of the ordinary skill in the art would also have been motivated to do so to reduce caloric value of the final composition. Thus it would have been obvious to modify disclosure of Billerbeck et al and to add soy protein to the nut spread composition. Then the final product would have a peanut content of from about 60 to 92 wt. %, the added oil content of from 6 to 24 weight percent, the high intensity sweetener content of from about 0.001% to about 2wt.% , and the soy protein content of from about 15% to about 50%. Therefore the final composition would inherently have a total adjusted carbohydrate content as claimed

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

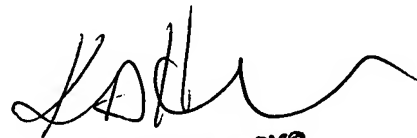
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Vera Stulii



KEITH HENDRICKS  
PRIMARY EXAMINER